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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,694	11/25/2003	William T. Ball	P06474US3	6303
34082	7590	07/23/2004	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			PRUNNER, KATHLEEN J	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/721,694

Applicant(s)

BALL, WILLIAM T.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

1. The following informalities in the specification are noted: (A) on page 3, line 34, "40" should read --14--. Appropriate correction is required.
2. The following informalities in the claims are noted: (A) in claim 1, on line 16, "secure" should be changed to read --secured--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 now calls for the sealing membrane to be "flexible". However, the originally filed disclosure fails to describe or provide support for the sealing membrane to be "flexible". Hence, claim 1 is directed to new matter.

### *Claim Rejections - 35 USC § 102*

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Delanoy. Delanoy discloses a plumbing test system having all the claimed features including a pipe 1 having a first

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exposed end and a second end in communication with a fluid source (note lines 9-16 on page 1) wherein the first end comprises a threaded portion 3 (note Fig. 2); a cap assembly 6 threadably mounted on the first end and wherein a portion 10 of the cap assembly is composed of a material capable of sealing the first end when the cap is threaded onto the first end (note lines 9-12 on page 1); the cap assembly 6 contains a cap 7 having an opening in a planar end with a sealing member 10 secured to the cap 7 and extending over the opening in the planar end (note lines 56-62 on page 1).

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ball in view of Lewis. Ball discloses an overflow system for a bathtub 18 which has a bottom or base 26, adjacent side walls 22 and end walls 24 (note Fig. 2), a drain port 28 in the bottom 26, and an overflow port 30 in one of the end walls 24 having the claimed features including a drain pipe (constituted by pipes 32, 34, 36 and 38) adapted to be in communication with the drain port 28 and the overflow port 30 (note Fig. 2), the drain pipe 34 having an inverted L-shape including a horizontal leg extending into and through the overflow port 30 of the bathtub 18 (note Fig. 2) and a vertical leg 34 extending downwardly for connection to a fluid drain system; and a cap (constituted by plate 70) mounted on an end of the horizontal leg extending through the overflow port 30; the cap 70 having an opening 72 in its circular planar end (note Fig. 4) with a thin flexible sealing membrane (constituted by diaphragm 64) secured to the cap 70 (via screws 78) and extending over the opening in the circular planar end (note Fig. 4). Ball further discloses that the cap 70 is mounted on the horizontal leg of the drain pipe 34 by the use of screws 78 which connect to the tabs on the horizontal leg (note lines 30-46 in col. 2). Although Ball fails to disclose that the horizontal leg of the drain pipe 34 extending through the overflow port 30 and the cap 70 have cooperating threads, attention is directed to Lewis who discloses another

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overflow system for a bathtub in which the horizontal leg of the drain pipe and the cap (constituted by capture nut 21) have cooperating threads (note Fig. 7). It would have been obvious to one of ordinary skill in the overflow system for a bathtub art, at the time the invention was made, to substitute for the screw attachment of the cap to the horizontal leg of Ball, the threaded attachment as, for example, taught by Lewis wherein so doing would amount to mere substitution of one attachment mechanism for another that would work equally well in the Ball device.

### *Response to Arguments*

9. Applicant's arguments filed July 6, 2004 have been fully considered but they are not deemed persuasive.

10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

11. In response to applicant's argument regarding the informality of the specification, it is pointed out that lines 33-34 on page 3 of the specification read "within the hollow wall 14. Conventional water pipes 44 extend through hollow wall 40 and are connected to valve". To be consistent, "40" on line 34 should be changed to --14-- so as to correspond with its description on line 33.

12. Applicant's arguments with regard to the rejection of claim 2 based on the Delanoy reference have been carefully considered. However, it is considered that the cap assembly of Delanoy is located on as well as positioned in the pipe via the cooperating threads thereof.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gene Mancione  
Supervisory Patent Examiner  
Group 3700

  
Kathleen J. Prunner

July 19, 2004